

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FLOYD WILSON,	)	Civil Action
	)	No. 12-cv-05162
Petitioner,	)	
	)	
v.	)	
	)	
	)	
MICHAEL WENEROWICZ,	)	
Superintendent and	)	
THE ATTORNEY GENERAL OF THE	)	
STATE OF PENNSYLVANIA,	)	
	)	
Respondents	)	

O R D E R

NOW, this 2<sup>nd</sup> day of May, 2014, upon consideration of the following documents:

- (1) Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, which petition is dated September 4, 2012 and was filed on September 10, 2012;<sup>1</sup>
- (2) District Attorney's Answer to §2254 State petition for Habeas Corpus and Memorandum of Law , which answer and memorandum of law were filed May 6, 2013;
- (3) Reply to Commonwealth's Answer to Petition for Writ of Habeas Corpus, which reply was filed May 23, 2013;
- (4) Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated and filed June 29, 2013;

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<sup>1</sup> Mr. Wilson's original petition for writ of habeas corpus was filed on September 10, 2012. However, the petition itself indicates that it was signed by petitioner on September 4, 2012. Thus, giving petitioner the benefit of the prison mailbox rule, (See Burns v. Morton, 134 F.3d 109 (3d Cir. 1998) and Rule 3(d) of the Rules Governing Section 2254 Cases in the United States District Courts), I consider September 4, 2012 the filing date of Mr. Wilson's original petition.

(5) Untitled request of petitioner filed July 12, 2013; and

(6) Notice Re: Exhaustion of Remedies filed by petitioner January 7, 2014;

it appearing that as of the date of this Order no objections have been filed to the Report and Recommendation of Magistrate Judge Caracappa; it further appearing after review of this matter that Magistrate Judge Caracappa's Report and Recommendation correctly determined the legal and factual issues presented in the petition for habeas corpus relief,

IT IS ORDERED that Magistrate Judge Caracappa's Report and Recommendation is approved and adopted.

IT IS FURTHER ORDERED that the petition for habeas corpus relief is stayed and all proceedings are held in abeyance until conclusion of petitioner's state court proceedings and the final decision of the United States Supreme Court whether to grant the petition for certiorari filed February 24, 2014 in Commonwealth v. Cunningham, \_\_\_ Pa. \_\_\_, 81 A.3d 1 (2013) or otherwise to resolve the question of the retroactive application of Miller v. Alabama, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).<sup>2</sup>

IT IS FURTHER ORDERED that the Clerk of Court shall place this matter in civil suspense until further Order of court.

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<sup>2</sup> By Order dated January 28, 2013 and subsequent to the issuance of Magistrate Judge Caracappa's Report and Recommendation in this case, Chief Judge Petrese B. Tucker of the United States District Court for the Eastern District of Pennsylvania placed all habeas petitions raising the issue of a petitioner's right to retroactive application of the holding in Miller, supra.

IT IS FURTHER ORDERED that petitioner shall notify the court within 45 days following the conclusion of his state court proceedings. Failure to do so may result in dismissal of the within petition.

BY THE COURT:

/s/ JAMES KNOLL GARDNER

James Knoll Gardner

United States District Judge